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Attorneys for Defendants
7 Nationstar Mortgage LLC d/b/a Mr. Cooper
and U.S. Bank National Association, as Trustee for
8 WOV ML Pass-Through Trust I
9

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT COURT OF CALIFORNIA
12

13 STEVE F. TIBBETTS and
14 TAMBERLYN TIBBETTS,

15 Plaintiffs,

16 v.
17

18 KELLER MORTGAGE, LLC dba
KELLER MORTGAGE,
19 NATIONSTAR MORTGAGE LLC,
dba MR. COOPER, U.S. BANK
20 NATIONAL ASSOCIATION and
DOES 1-20, inclusive,
21

22 Defendants.
23

Case No. 2:23-CV-00596-JAM-CKD

**STIPULATION AND
PROTECTIVE ORDER
REGARDING CONFIDENTIAL
INFORMATION; AND PROPOSED
ORDER**

***WITH MODIFICATION BY THE
COURT***

24
25 **IT IS HEREBY STIPULATED** by and between Plaintiffs, Steve F. Tibbetts
26 and Tamberlyn Tibbetts (collectively, “Plaintiffs”), and Defendants, Nationstar
27 Mortgage LLC dba Mr. Cooper and U.S. Bank National Association (“Defendants”
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1 collectively, with Plaintiffs, the “Parties”); by and through undersigned counsel,
2 that—in order to facilitate the exchange of information and documents which may
3 be subject to confidentiality limitations on disclosure due to federal laws, state laws,
4 and privacy rights—the Parties stipulate as follows:
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6
7 1. In this Stipulation and Protective Order, the words set forth below shall
8 have the following meanings:

9 a. “Proceeding” means the above-entitled proceeding, Case
10 Number 2:23-CV-00596-JAM-CKD.

11 b. “Court” means the Hon. John A. Mendez, or any other judge to
12 which this Proceeding may be assigned, including Court staff participating in
13 such proceedings.

14 c. “Confidential” means any Documents, Testimony, or
15 Information which is in the possession of a Designating Party who believes in
16 good faith that such information is entitled to confidential treatment under
17 applicable law.

18 d. “Confidential Materials” means any Documents, Testimony, or
19 Information as defined below designated as “Confidential” pursuant to the
20 provisions of this Stipulation and Protective Order.

21 e. “Designating Party” means the Party that designates Materials as
22 “Confidential.”

23 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal,
24 divulge, give, or make available Materials, or any part thereof, or any
25 information contained therein.

26 g. “Documents” means (i) any “Writing,” “Original,” and
27 “Duplicate” as those terms are defined by California Evidence Code Sections
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1 250, 255, and 260, which have been produced in discovery in this Proceeding
2 by any person, and (ii) any copies, reproductions, or summaries of all or any
3 part of the foregoing.

4 h. “Information” means the content of Documents or Testimony.

5 i. “Testimony” means all depositions, declarations or other
6 testimony taken or used in this Proceeding.

7 2. The Designating Party shall have the right to designate as
8 “Confidential” any Documents, Testimony, or Information that the Designating
9 Party in good faith believes to contain non-public information that is entitled to
10 confidential treatment under applicable law.

11 3. The entry of this Stipulation and Protective Order does not alter, waive,
12 modify, or abridge any right, privilege or protection otherwise available to any Party
13 with respect to the discovery of matters, including but not limited to any Party’s right
14 to assert the attorney-client privilege, the attorney work product doctrine, or other
15 privileges, or any Party’s right to contest any such assertion.

16 4. Any Documents, Testimony, or Information to be designated as
17 “Confidential” must be clearly so designated before the Document, Testimony, or
18 Information is Disclosed or produced. The parties may agree that the case name and
19 number are to be part of the “Confidential” designation. The “Confidential”
20 designation should not obscure or interfere with the legibility of the designated
21 Information.

22 a. For Documents (apart from transcripts of depositions or other
23 pretrial or trial proceedings), the Designating Party must affix the legend
24 “Confidential” on each page of any Document containing such designated
25 Confidential Material.

26 b. For Testimony given in depositions the Designating Party may
27 either:
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1 i. identify on the record, before the close of the deposition,
2 all “Confidential” Testimony, by specifying all portions of the
3 Testimony that qualify as “Confidential;” or

4 ii. designate the entirety of the Testimony at the deposition
5 as “Confidential” (before the deposition is concluded) with the right to
6 identify more specific portions of the Testimony as to which protection
7 is sought within 30 days following receipt of the deposition transcript.
8 In circumstances where portions of the deposition Testimony are
9 designated for protection, the transcript pages containing
10 “Confidential” Information may be separately bound by the court
11 reporter, who must affix to the top of each page the legend
12 “Confidential,” as instructed by the Designating Party.

13 c. For Information produced in some form other than Documents,
14 and for any other tangible items, including, without limitation, compact discs
15 or DVDs, the Designating Party must affix in a prominent place on the exterior
16 of the container or containers in which the Information or item is stored the
17 legend “Confidential.” If only portions of the Information or item warrant
18 protection, the Designating Party, to the extent practicable, shall identify the
19 “Confidential” portions.

20 5. The inadvertent production by any of the undersigned Parties or non-
21 Parties to the Proceedings of any Document, Testimony, or Information during
22 discovery in this Proceeding without a “Confidential” designation, shall be without
23 prejudice to any claim that such item is “Confidential” and such Party shall not be
24 held to have waived any rights by such inadvertent production. In the event that any
25 Document, Testimony, or Information that is subject to a “Confidential” designation
26 is inadvertently produced without such designation, the Party that inadvertently
27 produced the document shall give written notice of such inadvertent production
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1 within twenty (20) days of discovery of the inadvertent production, together with a
2 further copy of the subject Document, Testimony, or Information designated as
3 “Confidential” (the “Inadvertent Production Notice”). Upon receipt of such
4 Inadvertent Production Notice, the Party that received the inadvertently produced
5 Document, Testimony, or Information shall promptly destroy the inadvertently
6 produced Document, Testimony, or Information and all copies thereof, or, at the
7 expense of the producing Party, return such together with all copies of such
8 Document, Testimony, or Information to counsel for the producing Party and shall
9 retain only the “Confidential” designated Materials. Should the receiving Party
10 choose to destroy such inadvertently produced Document, Testimony, or
11 Information, the receiving Party shall notify the producing Party in writing of such
12 destruction within ten (10) days of receipt of written notice of the inadvertent
13 production. This provision is not intended to apply to any inadvertent production of
14 any Information protected by attorney-client or work product privileges. In the event
15 that this provision conflicts with any applicable law regarding waiver of
16 confidentiality through the inadvertent production of Documents, Testimony, or
17 Information, such law shall govern.

18 6. In the event that counsel for a Party receiving Documents, Testimony,
19 or Information in discovery designated as “Confidential” objects to such designation
20 with respect to any or all of such items, said counsel shall advise counsel for the
21 Designating Party, in writing, of such objections, the specific Documents,
22 Testimony, or Information to which each objection pertains, and the specific reasons
23 and support for such objections (the “Designation Objections”). Counsel for the
24 Designating Party shall have thirty (30) days from receipt of the written Designation
25 Objections to either (a) agree in writing to de-designate Documents, Testimony, or
26 Information pursuant to any or all of the Designation Objections and/or (b) file a
27 motion with the Court seeking to uphold any or all designations on Documents,
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1 Testimony, or Information addressed by the Designation Objections (the
2 “Designation Motion”). Pending a resolution of the Designation Motion by the
3 Court, any and all existing designations on the Documents, Testimony, or
4 Information at issue in such Motion shall remain in place. The Designating Party
5 shall have the burden on any Designation Motion of establishing the applicability of
6 its “Confidential” designation. In the event that the Designation Objects are neither
7 timely agreed to nor timely addressed in the Designation Motion, then such
8 Documents, Testimony, or Information shall be de-designated in accordance with
9 the Designation Objection applicable to such material.

10 7. Access to and/or Disclosure of Confidential Materials designated as
11 “Confidential” shall be permitted only to the following persons:

12 a. the Court;

13 b. (1) Attorneys of record in the Proceedings and their affiliated
14 attorneys, paralegals, clerical and secretarial staff employed by such attorneys
15 who are actively involved in the Proceedings and are not employees of any
16 Party, and (2) In-house counsel to the undersigned Parties and the paralegal,
17 clerical and secretarial staff employed by such counsel. Provided, however,
18 that each non-lawyer given access to Confidential Materials shall be advised
19 that such Materials are being Disclosed pursuant to, and are subject to, the
20 terms of this Stipulation and Protective Order and that they may not be
21 Disclosed other than pursuant to its terms;

22 c. those officers, directors, partners, members, employees and
23 agents of all non-designating Parties that counsel for such Parties deems
24 necessary to aid counsel in the prosecution and defense of this Proceeding;
25 provided, however, that prior to the Disclosure of Confidential Materials to
26 any such officer, director, partner, member, employee or agent, counsel for
27 the Party making the Disclosure shall deliver a copy of this Stipulation and
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1 Protective Order to such person, shall explain that such person is bound to
2 follow the terms of such Order, and shall secure the signature of such person
3 on a statement in the form attached hereto as Exhibit A;

4 d. court reporters in this Proceeding (whether at depositions,
5 hearings, or any other proceeding);

6 e. any deposition, trial or hearing witness in the Proceeding who
7 previously has had access to the Confidential Materials, or who is currently
8 or was previously an officer, director, partner, member, employee or agent of
9 an entity that has had access to the Confidential Materials;

10 f. any deposition or non-trial hearing witness in the Proceeding
11 who previously did not have access to the Confidential Materials; provided,
12 however, that each such witness given access to Confidential Materials shall
13 be advised that such Materials are being Disclosed pursuant to, and are subject
14 to, the terms of this Stipulation and Protective Order and that they may not be
15 Disclosed other than pursuant to its terms;

16 g. mock jury participants, provided, however, that prior to the
17 Disclosure of Confidential Materials to any such mock jury participant,
18 counsel for the Party making the Disclosure shall deliver a copy of this
19 Stipulation and Protective Order to such person, shall explain that such person
20 is bound to follow the terms of such Order, and shall secure the signature of
21 such person on a statement in the form attached hereto as Exhibit A.

22 h. outside experts or expert consultants consulted by the
23 undersigned Parties or their counsel in connection with the Proceeding,
24 whether or not retained to testify at any oral hearing; provided, however, that
25 prior to the Disclosure of Confidential Materials to any such expert or expert
26 consultant, counsel for the Party making the Disclosure shall deliver a copy
27 of this Stipulation and Protective Order to such person, shall explain its terms
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1 to such person, and shall secure the signature of such person on a statement in
2 the form attached hereto as Exhibit A. It shall be the obligation of counsel,
3 upon learning of any breach or threatened breach of this Stipulation and
4 Protective Order by any such expert or expert consultant, to promptly notify
5 counsel for the Designating Party of such breach or threatened breach;

6 i. a designated mediator mutually selected by the Parties; and

7 j. any other person that the Designating Party agrees to in writing.

8 8. Confidential Materials shall be used by the persons receiving them only
9 for the purposes of preparing for, conducting, participating in the conduct of, and/or
10 prosecuting and/or defending the Proceeding, and/or pursuing settlement of the
11 Proceeding, and not for any business or other purpose whatsoever.

12 9. Any Party to the Proceeding (or other person subject to the terms of this
13 Stipulation and Protective Order) may ask the Court, after appropriate notice to the
14 other Parties to the Proceeding, to modify or grant relief from any provision of this
15 Stipulation and Protective Order.

16 10. Entering into, agreeing to, and/or complying with the terms of this
17 Stipulation and Protective Order shall not:

18 a. operate as an admission by any person that any particular
19 Document, Testimony, or Information marked “Confidential” contains or
20 reflects trade secrets, proprietary, confidential or competitively sensitive
21 business, commercial, financial or personal information; or

22 b. prejudice in any way the right of any Party (or any other person
23 subject to the terms of this Stipulation and Protective Order):

24 i. to seek a determination by the Court of whether any
25 particular Confidential Material should be subject to protection as
26 “Confidential” under the terms of this Stipulation and Protective Order;

27 or
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1 ii. to seek relief from the Court on appropriate notice to all
2 other Parties to the Proceeding from any provision(s) of this Stipulation
3 and Protective Order, either generally or as to any particular Document,
4 Material or Information.

5 11. Any Party to the Proceeding who has not executed this Stipulation and
6 Protective Order as of the time it is presented to the Court for signature may
7 thereafter become a Party to this Stipulation and Protective Order by its counsel's
8 signing and dating a copy thereof and filing the same with the Court, and serving
9 copies of such signed and dated copy upon the other Parties to this Stipulation and
10 Protective Order.

11 12. Any Information that may be produced by a non-Party witness in
12 discovery in the Proceeding pursuant to subpoena or otherwise may be designated
13 by such non-Party as "Confidential" under the terms of this Stipulation and
14 Protective Order, and any such designation by a non-Party shall have the same force
15 and effect, and create the same duties and obligations, as if made by one of the
16 undersigned Parties hereto. Any such designation shall also function as a consent by
17 such producing Party to the authority of the Court in the Proceeding to resolve and
18 conclusively determine any motion or other application made by any person or Party
19 with respect to such designation, or any other matter otherwise arising under this
20 Stipulation and Protective Order.

21 13. If any person subject to this Stipulation and Protective Order who has
22 custody of any Confidential Materials receives a subpoena or other process
23 ("Subpoena") from any government or other person or entity demanding production
24 of Confidential Materials, the recipient of the Subpoena shall promptly give notice
25 of the same by electronic mail transmission, followed by either express mail or
26 overnight delivery to counsel of record for the Designating Party, and shall furnish
27 such counsel with a copy of the Subpoena. Upon receipt of this notice, the
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1 Designating Party may, in its sole discretion and at its own cost, move to quash or
2 limit the Subpoena, otherwise oppose production of the Confidential Materials,
3 and/or seek to obtain confidential treatment of such Confidential Materials from the
4 subpoenaing person or entity to the fullest extent available under law. The recipient
5 of the Subpoena may not produce any Documents, Testimony, or Information
6 pursuant to the Subpoena prior to the date specified for production on the Subpoena.

7 14. Nothing in this Stipulation and Protective Order shall be construed to
8 preclude either Party from asserting in good faith that certain Confidential Materials
9 require additional protection. The Parties shall meet and confer to agree upon the
10 terms of such additional protection.

11 15. If, after execution of this Stipulation and Protective Order, any
12 Confidential Materials submitted by a Designating Party under the terms of this
13 Stipulation and Protective Order is Disclosed by a non-Designating Party to any
14 person other than in the manner authorized by this Stipulation and Protective Order,
15 the non-Designating Party responsible for the Disclosure shall bring all pertinent
16 facts relating to the Disclosure of such Confidential Materials to the immediate
17 attention of the Designating Party.

18 16. This Stipulation and Protective Order is entered into without prejudice
19 to the right of any Party to knowingly waive the applicability of this Stipulation and
20 Protective Order to any Confidential Materials designated by that Party. If the
21 Designating Party uses Confidential Materials in a non-Confidential manner, then
22 the Designating Party shall advise that the designation no longer applies.

23 17. Where any Confidential Materials, or Information derived from
24 Confidential Materials, is included in any motion or other proceeding governed by
25 Federal Rules of Civil Procedure, Rule 5.2, or Local Rules of the United States
26 District Court, Eastern District of California, Rule 141, the party shall follow those
27 rules. With respect to discovery motions or other proceedings not governed by
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1 Federal Rules of Civil Procedure, Rule 5.2, or Local Rules of the United States
2 District Court, Eastern District of California, Rule 141, the following shall apply: If
3 Confidential Materials or Information derived from Confidential Materials are
4 submitted to or otherwise disclosed to the Court in connection with discovery
5 motions and proceedings, the same shall be separately filed under seal with the clerk
6 of the Court in an envelope marked: "CONFIDENTIAL – FILED UNDER SEAL
7 PURSUANT TO PROTECTIVE ORDER AND WITHOUT ANY FURTHER
8 SEALING ORDER REQUIRED."

9 18. The Parties shall meet and confer regarding the procedures for use of
10 Confidential Materials at trial and shall move the Court for entry of an appropriate
11 order.

12 19. Nothing in this Stipulation and Protective Order shall affect the
13 admissibility into evidence of Confidential Materials, or abridge the rights of any
14 person to seek judicial review or to pursue other appropriate judicial action with
15 respect to any ruling made by the Court concerning the issue of the status of
16 Protected Material.

17 20. This Stipulation and Protective Order shall continue to be binding after
18 the conclusion of this Proceeding and all subsequent proceedings arising from this
19 Proceeding, except that a Party may seek the written permission of the Designating
20 Party or may move the Court for relief from the provisions of this Stipulation and
21 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction
22 to enforce, modify, or reconsider this Stipulation and Protective Order, even after
23 the Proceeding is terminated.

24 21. Upon written request made within thirty (30) days after the settlement
25 or other termination of the Proceeding, the undersigned Parties shall have thirty (30)
26 days to either:
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1 a. promptly return to counsel for each Designating Party all
2 Confidential Materials and all copies thereof (except that counsel for each
3 Party may maintain in its files, in continuing compliance with the terms of this
4 Stipulation and Protective Order, all work product, and one copy of each
5 pleading filed with the Court [and one copy of each deposition transcript
6 together with the exhibits marked at the deposition]);

7 b. agree with counsel for the Designating Party upon appropriate
8 methods and certification of destruction or other disposition of such
9 Confidential Materials; or

10 c. as to any Documents, Testimony or other Information not
11 addressed by sub-paragraphs (a) and (b), file a motion seeking a Court order
12 regarding proper preservation of such Materials. To the extent permitted by
13 law the Court shall retain continuing jurisdiction to review and rule upon the
14 motion referred to in sub-paragraph (c) herein.


15 22. After this Stipulation and Protective Order has been signed by counsel
16 for all Parties, it shall be presented to the Court for entry. Counsel agree to be bound
17 by the terms set forth herein with regard to any Confidential Materials that have been
18 produced before the Court signs this Stipulation and Protective Order.


19 23. The Parties, and all signatories to the Certification attached hereto as
20 Exhibit A, agree to be bound by this Stipulation and Protective Order pending its
21 approval and entry by the Court. In the event that the Court modifies this Stipulation
22 and Protective Order, or in the event that the Court enters a different Protective
23 Order, the Parties agree to be bound by this Stipulation and Protective Order until
24 such time as the Court may enter such a different Order. It is the Parties' intent to be
25 bound by the terms of this Stipulation and Protective Order pending its entry so as
26 to allow for immediate production of Confidential Materials under the terms herein.

24. This Stipulation and Protective Order may be executed in counterparts.

FRANK LAW GROUP, P.C.

TROUTMAN PEPPER HAMILTON
SANDERS, LLP

By 
DENNIS G. SELEY
Attorneys for Plaintiffs
STEVE F. TIBBETTS and
TAMBERLYN TIBBETTS

By 
HOLLY E. CHEONG
Attorneys for Defendants
NATIONSTAR MORTGAGE LLC
dba MR. COOPER
U.S. BANK NATIONAL ASS'N

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVE F. TIBBETTS and
TAMBERLYN TIBBETTS,

Plaintiffs,

v.

KELLER MORTGAGE, LLC dba
KELLER MORTGAGE,
NATIONSTAR MORTGAGE LLC,
dba MR. COOPER, U.S. BANK
NATIONAL ASSOCIATION and
DOES 1-20, inclusive,

Defendants.

Case No. 2:23-CV-00596-JAM-CKD

**PROTECTIVE ORDER REGARDING
CONFIDENTIAL INFORMATION**

***WITH MODIFICATION BY THE
COURT***

ORDER

The Court has reviewed the parties' stipulated protective order. (ECF No. 53.) The stipulation comports with the relevant authorities and the court's applicable local rule. See L.R. 141.1. The Court APPROVES the protective order, subject to the following clarifications. The Court's Local Rules indicate that once an action is closed, it "will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); see also, e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D. Cal., Feb. 03, 2017) (noting that courts in the district generally do not retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, the Court will not retain jurisdiction over this protective order once the case is closed.

The protective order also appears to contain references to California Rules of Evidence. See Stip. Prot. Order ¶ 1(g) (referencing California Evidence Code Sections 250, 255, and 260). To the extent the parties' protective order references California rules of evidence, the Court rejects these references and reminds the parties to refer to the applicable rules of evidence under the Federal Rules of Evidence.

Further, the stipulated protective order does not entitle a party to file confidential information under seal. Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal. If a party's request to file confidential material under seal is denied by the Court, then the party may file the information in the public record unless otherwise instructed by the Court.

Dated: October 22, 2024


 CAROLYN K. DELANEY
 UNITED STATES MAGISTRATE JUDGE

5, tibb0596.24.stip.po

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____
[NAME], _____ [POSITION
AND EMPLOYER], am about to receive Confidential Materials supplied in
connection with the Proceeding, 2:23-CV-00596-JAM-CKD.

I certify that I understand that the Confidential Materials are provided to me
subject to the terms and restrictions of the Stipulation and Protective Order filed in
this Proceeding. I have been given a copy of the Stipulation and Protective Order; I
have read it, and I agree to be bound by its terms.

I understand that the Confidential Materials, as defined in the Stipulation
and Protective Order, including any notes or other records that may be made
regarding any such materials, shall not be Disclosed to anyone except as expressly
permitted by the Stipulation and Protective Order.

I will not copy or use, except solely for the purposes of this Proceeding, any
Confidential Materials obtained pursuant to this Stipulation and Protective Order,
except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential
Materials provided to me in the Proceeding in a secure manner, and that all copies
of such materials are to remain in my personal custody until termination of my

1 participation in this Proceeding, whereupon the copies of such materials will be
2 returned to counsel who provided me with such materials.
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4 I declare under penalty of perjury, under the laws of the State of California,
5 that the foregoing is true and correct.
6

7
8 Executed this _____ day of _____, 202__, at _____.
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12 _____
13 Signature

14 _____
15 Title

16 _____
17 Address

18 _____
19 City, State, Zip

20 _____
21 Telephone Number
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